

AGENDA
CITY COUNCIL SPECIAL MEETING
Wednesday, May 25, 2022
9:00 AM

The regular meeting of the City Council Special Meeting will be held on May 25, 2022 at 9:00 AM in
the Council Chambers
455 N. Main Street, Wichita, KS 67202.

OPENING OF SPECIAL MEETING

Call to Order

Reading of the Call for the Meeting by the City Clerk

Consideration of the Business in the Order Embraced in the Call for the Meeting

X. COUNCIL MEMBER AGENDA

1. Police Impound Towing Contracts and Creation of Section 11.97.055 Pertaining to the Establishment of a Payment Plan Program for Assistance with Impound Fees

RECOMMENDED ACTION: Approve the recommended Police Impound Towing contracts and authorize the necessary signatures, place the proposed ordinances on first reading, and direct staff to explore new strategies for enhancing impound towing prior to the renewal period.

[Agenda Report No. X-1](#)

[Arrow Wrecker Service Signed Contract 05_24_22.pdf](#)

[Ordinance 51-864](#)

[Kidd's Towing Signed Contract 05_24_22.pdf](#)

[Tow All Signed Contract 05_24_22.pdf](#)

ADJOURNMENT

**City of Wichita
Special City Council Meeting
May 25, 2022**

TO: Mayor and City Council Members

SUBJECT: Police Impound Towing Contracts and Creation of Section 11.97.055
Pertaining to the Establishment of a Payment Plan Program for Assistance
with Impound Fees

INITIATED BY: Wichita Police Department

AGENDA: Council Member Agenda

Recommendation: Approve the recommended Police Impound Towing contracts and place the ordinance creating a payment plan for impound fees on first reading.

Background: Currently, wrecker companies are licensed by the City of Wichita to perform emergency towing services. The Police Department utilizes towing services for two types of emergency tows and selects the licensed wrecker companies sequentially from a list whenever an emergency tow or impound tow is necessary.

The Police Department requests impound tows based on guidelines in City Code Section 11.97.010. Generally, these guidelines include removing abandoned vehicles, vehicles that present a traffic hazard, or vehicles when the driver is arrested. The City has contracted with wrecker companies for these tows, and fees for impound tows are set in a contract between the wrecker service and the City.

On December 22, 2021, a Request for Proposal (RFP) was issued to obtain a towing, storage, and online auction service to handle all police-initiated impounds. Two proposal submittals were received for this RFP, one proposal represented eight wrecker companies, and the other proposal represented one wrecker company. After staff review and analysis of both proposal submittals, the Staff Screening and Selection Committee (SSSC) negotiated with all nine towing companies. The SSSC deemed that all nine of the towing firms met the stated evaluation criteria in the RFP.

Staff initially presented impound towing contracts to the City Council on May 3, 2022. After the staff presentation, the discussion was tabled so City Council members could participate with staff in conversations with the wrecker companies prior to approving contracts. The parties met and discussed price pressures experienced by the wrecker companies (including difficulty attracting operators and higher fuel costs) and strategies to assist owners of impounded vehicles that might struggle to pay towing bills. The discussion also focused on future strategic options, including City operation of impound towing, impound yards or both.

On May 17, 2022, staff reported the results of the additional discussion with the wrecker companies, including the lack of any concessions provided at the meeting. Options to assist indigent residents whose vehicles were impounded were discussed. After considerable discussion, the City Council did not approve the wrecker contracts. Instead, staff were directed to explore options for assisting indigent residents whose vehicles were impounded.

In addition to exploring a payment plan option for impound fees in certain cases, staff also asked the wrecker companies for their “best and final offers.” The companies were advised that the best proposals (up to four companies) would be submitted to the City Council for consideration. Eight proposals were received.

Analysis: Kidd Towing and Tow All proposals were determined, by staff, to have the best proposal, as it maintained the pricing of the 2020 contract. Because it is unclear if two companies can handle the volume of vehicles impounded, staff recommend that a third contract be approved. Based on Arrow Wrecker’s proposal, staff recommend also contracting with that firm. Arrow’s proposal included basic towing rates of \$125 (light duty towing and the lot fee) that were equivalent to Kidd and Tow All, and lower than the \$150 fee included in the other five proposals.

Arrow, Tow All and Kidd all proposed to close their impound lot on Sundays and holidays, while the other five proposals indicated their lots would be open seven days a week. However, Arrow, Tow All and Kidd would not charge storage fees for any closed days if the vehicle was picked up within three days of the closed days. In addition, Arrow, Tow All and Kidd proposed a fee of \$125 for the City for each auctioned vehicle, with the fee paid after towing fees were deducted. The other five proposals included a fee of \$225 for the City, but only after towing fees and other fees were deducted. Staff believe that after all fees are netting out, the difference between the auction proceeds received by the City would be similar under all the proposals.

Creating a Payment Plan - Based on discussion at the May 17, 2022, City Council meeting, staff have drafted a proposed ordinance that authorizes the City Manager to establish an installment payment program for vehicle owners who are unable to pay fees incurred due to the impoundment of their motor vehicle pursuant to Section 11.97.010. The proposed ordinance guidelines are:

1. The owner (or renter) of the towed vehicle must be an individual. Businesses, including partnerships, trusts, for-profit corporations, and nonprofit corporations are not eligible to participate in the program.
2. All requests for assistance must be received within five calendar days from the date of the tow or impound of the motor vehicle.
3. The owner must show proof of valid registration and ownership of the motor vehicle.
4. The owner must provide proof of being economically disadvantaged. (Please provide a few examples of qualifying programs.)
5. The payment plan would provide for monthly installments of no more than \$25 for total amounts not to exceed \$600. All fees should be paid within 24 months.
6. The plan will limit repayment of the City’s processing fee collected from impound contractors to \$5 or less for indigent persons.
7. Individuals (owners) may only participate in one payment plan at any given time.

The proposed ordinance also contains a Homeless Waiver which authorizes the City Manager to establish a program to provide a one-time waiver of impound fees, not to exceed \$600, for individuals who are homeless. Only individuals who are receiving homeless services and registered with the Homeless Management Information System at the time of impoundment of the motor vehicle are eligible for the waiver.

Financial Considerations: The \$30 administrative fee is expected to generate \$30,000 annually, consistent with prior years’ experience. The amount received by the City for impound auctioned vehicles is estimated to be as much as \$75,000 annually, assuming 600 vehicles are auctioned, and the City receives \$125 per vehicle. Since the City portion is received only if funds are available after towing fees are deducted from the proceeds, actual revenue received by the City could be lower, depending on the results of the vehicle

auctions. Any revenue collected by the City is used to offset WPD costs of administering the provisions of the City Code pertaining to impound towing and other regulatory and contractual provisions.

Any cost to the City created by the proposed ordinance revisions would depend on the number of vehicle owners that redeemed vehicles and that met the criteria for assistance. Reducing the administrative fee would reduce City revenues by up to \$25 for each impound redeemed. Assuming fifty vehicle owners participated, the impact to the General Fund would be \$1,250. Any impound fee assistance provided to indigent residents and the administration of any program would have an impact on City expenditures, although this is expected to be minimal and would be offset to some degree by any payment plan collections received. Assuming 50 vehicle owners participated, the impact to the General Fund could be as much as \$30,000, although this could be reduced by any payments received from program participants. The actual impact of the proposed ordinance can be re-evaluated during the one-year contract term.

Legal Considerations: The proposed contracts and proposed ordinance have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that City Council approve the recommended Police Impound Towing contracts and authorize the necessary signatures, place the proposed ordinances on first reading, and direct staff to explore new strategies for enhancing impound towing prior to the renewal period.

Attachments: Recommended Police Impound Towing contracts and proposed ordinance.

**AGREEMENT FOR IMPOUND SERVICES
Wrecker Contractor**

THIS AGREEMENT is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Burkhart Enterprise Inc., DBA Arrow Wrecker Service, 531 E Macarthur Road, Wichita, KS 67216**, Telephone (316)522-8156, (hereinafter referred to as the Wrecker Contractor) on the 1st day of June, 2022.

WHEREAS, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

WHEREAS, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – 210392; and

WHEREAS, the City has sought competitive proposals for this purpose under Proposal No. 210382, and two (2) Wrecker Contractors have submitted the proposal beneficial to the City; and

WHEREAS, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

WHEREAS K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

NOW, THEREFORE, the parties agree as follows:

- I. ***Term.*** The work under this Agreement shall commence on or about June 1, 2022. The term of this contract shall be from June 1, 2022, through May 31, 2023, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on June 1, 2022.
- II. ***Services to be Performed by the Wrecker Contractor.*** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – 210382, which are incorporated herein by this reference the same as if it were fully set forth. Any additional requirements as set out in the City of Wichita request for proposal letting process for 210392 shall be included as Addendum D to this agreement.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched for all calls within the City limits shall be made within 45 minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Will tow heavy-duty equipment/trucks. If a company of Wrecker Contractor that is called is unable to tow vehicle because of it is a heavy-duty equipment/trucks, that company may contract with any other company of Wrecker Contractor to remove the vehicle to the company's lot.

Is able to tow multiple vehicles from a single location at one time. If a company of Wrecker Contractor is unable to remove all of the vehicles from a single location at one time that company may contract with any other company of Wrecker Contractor to remove the vehicle(s) to the company's lot.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit C.

Rare & Specialized.

Rare specialized tows, such as overturned vehicle or submerged or partially submerged vehicles will be approved by a WPD supervisor on-site per the stated impound fees.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public: Monday thru Friday from 7:30 a.m. to 6:00 p.m., Saturday 9:00 a.m. to 3:00 p.m. so that the owners may retrieve their vehicles. The office will be closed for the following holidays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas. Storage will be charged at the normal rate for these days, except if a customer is released their vehicle within three (3) business days after a Holiday or Sunday that the office was closed, storage for that Holiday or Sunday will not be charged.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up to date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at

the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

b. Reporting

Wrecker Contractor will be required to furnish the following electronic monthly reports to the Wichita Police Department by the 10th day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Electronic monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These electronic reports shall be electronically emailed to Wichita Police Department staff by the 10th day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at thirty-five dollars (\$35) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction service. Wrecker Contractor shall notify the Wichita Police

Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. Wrecker Contractor will not remove ANY parts from vehicle prior to citizen pickup or auction. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit C attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may direct Wrecker Contractor to tow impounded vehicle located within the city limits from that specific location to a designated Wichita Police property. The maximum fee for such a tow for a vehicle that is upright on four wheels will be capped at a maximum of one hundred and forty dollars (\$140) tow fee. Fees outlined in Exhibit C will be charged to the City for any other tow.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, six (6) days per week, and except for the stated previous holidays. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will pay the City one hundred and twenty fifty dollars (\$125) for every auctioned vehicle. However, no payment will be made to the City for a vehicle that does not sell for at least the amount owed to the Wrecker Contractor for towing, loaded mile fee, and the following tow fees only if the tow required the following services: Overturn/Rollover, Dolly Services, Winching, Heavy Duty towing. Wrecker Contractor will provide WPD the tow bill with detailed costs of each item that were incurred by the Wrecker Contractor for each vehicle sold at the auction. If the amount received at auction exceeds the amount of costs listed in this paragraph incurred by Wrecker Contractor, then Wrecker Contractor will forward the excess auction amount up to the one hundred twenty-five (\$125) to the City within 30 days of and receipt of payment for the sale. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on

behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.

- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.
- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation with ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Suspension of Contract Terms due to Billing Errors.***

For impound invoices for tows occurring after May 3, 2022, the identification of two or more invoice errors by WPD staff and agreed upon by the Contractor during a thirty (30) day period, following written notification to the Wrecker Contractor, may result in a suspension of the Wrecker Contractor. Such suspension shall be for to ten (10) days. The

continued or repeated submission of invoices containing billing errors may result in termination of the contract.

XII. **Governing Law.** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.

XIII. **Waivers.** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIV. **Representatives of Contracting Parties.** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee
Wichita Police Department
455 N. Main 4th floor
Wichita, Kansas 67202
316-268-4158

(b) Representing the Wrecker Contractor:

Burkhart Enterprise Inc. DBA
Arrow Wrecker Service
531 E Macarthur Road
Wichita, KS 67216
316-522-8156

XV. **Insurance and Indemnification.**

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
Property Damage Liability	\$1,000,000 each occurrence

\$1,000,000 each aggregate

Or

Bodily Injury and Property Damage	\$1,000,000 each occurrence
Liability (Combined Single Limit)	\$1,000,000 each aggregate

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage	
Liability (Combined Single Limit)	\$1,000,000 each accident

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
---------------------	-------------------------

4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XVI. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.

XVII. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

XVIII. **Compliance with Laws.** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.

XIX. **Representative's Authority to Contract.** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

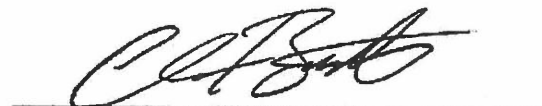
Karen Sublett
City Clerk

Brandon Whipple
Mayor

Approved as to Form:

Burkhart Enterprise Inc. DBA
Arrow Wrecker Service

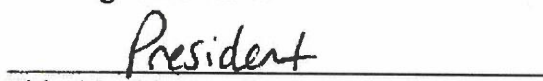

Jennifer Magana
City Attorney and Director of Law



Owner Name



Print Signature Name



Title (President or Corporate Officer)

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability:** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance:** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing

adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

(Rev. 1/3/2022)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

EXHIBIT C

WRECKER FEES

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$120 the below charges can only be added IF APPLICABLE.

1. Hook/Roll Back Light Duty Towing - \$115 hook up fee
2. Loaded Mile - \$4.50 per loaded mile
3. Overturn/Rollover - \$65
4. Dolly Service - \$65
5. Winching - \$30 per every 15 minutes
6. Waiting Time - \$20 per every 15 minutes
7. Storage – \$35 per day; heavy duty storage per day
8. Tarp Fee -\$25
9. Oil Dry - \$25
10. Lot Fee - \$10
11. Heavy Duty Towing - \$300 per hour
12. Heavy Duty Storage - \$50 per day
13. Low Boy - \$300 per hour
14. WPD Processing Fee for 1st Notices - \$30
15. Verification and Certifications - \$50 after the ten (10) business day waiting period, only to those vehicles that have not been pickup and for those vehicles that the Wrecker Contractor has actually completed and processed a title verification for that vehicle.

Fees for Hook/Rollback Light Duty Towing, Loaded Mile, Overturn/Rollover, Dolly Service, Storage and Heavy-Duty Towing and Storage will increase by four percent (4%) each year of the contract. Prices shall be rounded to the nearest dollar.

Oversized Trailers, Campers and/or Recreational Vehicles

The Wrecker Contractor may tow these types of vehicles to the Wrecker Contractor's lot at their discretion. Rates listed above in Exhibit C shall be charged. If Wrecker Contractor chooses to tow these types of vehicles to their lot

and the vehicle is not picked up, vehicle will go to auction. Wrecker Contractor vehicle will pay the City \$125 if the vehicle sold at auction per Section V of the agreement. If the vehicle does not sell at an auction, then the Wichita Police Department will pay the Wrecker Contractor the initial tow amount with a not to exceed amount of three hundred dollars (\$300) and another three hundred dollars (\$300) to tow vehicle to landfill and pay the disposal fee once the court order has been approved by WPD supervisor.

If Wrecker Contractor chooses not to tow to their lot, City may direct Wrecker Contractor to tow to a City lot of the City's choice. Regular fees for towing will apply. However, amount will not exceed three hundred dollars (\$300) unless authorized by a Police supervisor.

Exhibit D

SCOPE OF SERVICES

The proposer should be capable to provide a 24/7 full customer service program to WPD that is able of providing towing services, storage, ability to collect payments from owners during business hours that are willing to pick up and pay for the towing and storage fees for their vehicles and/or sell off vehicles (property) that have been deemed as unclaimed property, with all the legal proper notifications handled by WPD. Towing firm(s) should have the capability to provide customer service to citizens that come to the tow firm(s) facility to pay the established fees and pick up their vehicles and property. Citizens should be able to pay Towing Firms for their invoiced property by certified check, electronic funds transfer, cash, or credit card. In providing these services, the proposer agrees to fully comply with the terms, conditions, and representations of its program.

WPD will notify the tow firm(s) of when the unclaimed property can be sold at a public auction. The proposer will include payment of (\$125) two hundred dollars for each impound vehicle that was sold in an auction.

The towing firm(s) and/or on-line auction proposer should be able of providing the following services.

1. Proposer should be able to provide or contract with an auction service that has the necessary computer hardware and software, as well as provide related support services required for conducting and management of an on-line website auctioning services or contracting with a third party including:

Training in the use of the proposed system

Customer Support

Maintain a web site accessibility rate of at least 98%

PCI compliant in safeguarding the website

The proposer should be capable to document the ability for the auction service to incorporate digital photography into the advertisements for individual vehicles and misc. items that are put up for sale on the auction site, maintenance of complete and accurate records of the bidding for each of the auction items, chronology of the bidding for each of the auction items and the awarded price.

The recommended auction services should document the development, installation and maintenance of an adequate information systems on its website(s) to guide prospective proposers through the entire website, bidding, award of bid, payment, delivery and general information requirements of prospective proposers as well as a customer service functions for the benefit of proposers. Proposers should be able to document its capability to include information modules on its website for WPD staff to track status of vehicles and misc. items listed for auction sales and demonstrate the demographics of registered bidders on their auction website with at least a minimum of 50,000 registered bidders or provide the number

of registered bidders and demographics, which will be evaluated and determined by staff the most beneficial for WPD.

If the WPD discovers any objectionable material on Web pages utilized by the proposer to sell WPD property, the WPD reserves the right to demand the removal of such objectionable material. If such objectionable material is not removed immediately, then the WPD reserves the right to discontinue Internet auctions of its invoiced property.

The successful proposer should be able to maintain and manage the online auction services to include:

- a. The proposer should be able to provide advertising for auctions at the proposer's expense.
 - b. The proposer should be able to have or develop a website that meets or exceeds current industry practice standards with regard to user security.
 - c. The proposer should be able to commit to ongoing efforts in attracting in state, national proposers to its online auction to maximize sales price.
 - d. Have the ability to auction cars weekly. Our current practice is to conduct monthly auctions to minimize any storage charges and maximize the revenue to the city.
 - e. Provide an electronic database that tracks all vehicle transaction history from pick-up to final disposition.
 - f. Provide the WPD daily access to this electronic database and the subsequent reports and inventory status of every vehicle.
 - g. The proposer should be able to complete title affidavits and bill of sales for vehicles sold at auction.
 - h. Auction format similar to established current on-line auctions (i.e., E-bay) with familiar prompts and navigation for easy access to auction items.
 - i. Pre-qualify and register all proposers so that bid manipulation is eliminated and provide fraud detection and prevention features.
 - j. Provide dedicated Customer Service representative.
2. Proposers should be able to provide a list of other agencies, preferably governmental, which the proposer has currently and previously done business. Provide documentation of any viable experience or plans to develop in the operation of online auctioning services or proposed sub-contracting ventures. Such experience shall include posting on proposer's web site(s), operation of an online bidding system permitting continuous, 24 hour, real-time bidding and validation of bids and documentation of high proposer and collections along with supporting documentation for the City of Wichita audit process.
3. WPD reserves the right to have any vehicle returned to the possession of vehicle back to WPD, or its rightful owner, prior to auction even if the item has already been collected by proposer.
4. WPD shall conduct regular and unannounced random inspections of any and all facilities 24 hours a day, seven days per week, and 365 days per year. The proposer will

allow the WPD to monitor all administrative functions associated with WPD vehicles taken into their custody.

The successful firm(s) will be required to furnish the following reports to the WPD or when requested by WPD:

A detailed client list and shipping list.

Monthly reports of all of the WPD items of invoiced vehicle property that has been sold by proposer and the prices at which any such items were sold. This report shall include shipping and handling fees as well as sales taxes and credit card fees on each item.

Quarterly (un-audited) and annual (audited) financial Statements.

Monthly reports of all of the WPD's invoiced property on hand.

Monthly statements of returns of the invoiced property of the WPD that have been purchased at auction and the complaints of any purchasers.

Record Retention/ Audits: The successful proposer shall retain, during the performance of the contract and for a period of three years from the completion of the contract, all records pertaining to the successful proposer's proposal and vehicles impounded by the Wichita Police Department. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including proposer copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and within three (3) days from the date of the notice during the successful proposer's normal working hours.

City personnel may perform in-progress and post-audits of proposer's records as a result of a contract awarded pursuant to this Request for Proposals. Files would be available on demand and without notice during normal working hours.

5. The successful towing firm(s) proposer should be able to maintain and manage the listed services and/or provide a proposal to meet the objectives that are listed below to include:

- a. The proposer should be capable of responding to a police dispatched calls within 45 minutes of the time the call is received by WPD's dispatch.
- b. The proposer should be able to have a minimum of three tow trucks as per City Code 3.49 to be able to meet the daily needs of WPD.
- c. Proposer should be able to be responsible for removing all debris from any police accident scene.
- d. Proposer should be able to have all tow trucks marked appropriately with the company name.
- e. Proposer employees will wear appropriate clothing that shows the name of their company.
- f. City of Wichita has the right to suspend any contractor if two or more documented complaints are received, researched and proven.

- g. The proposer should be able to show experience in dealing with the public in returning vehicles that were towed insuring that systems are in place to make sure that releases are controlled by WPD.
- h. Proposer should be able of inspecting tow trucks to meet city requirements set forth in the contract.
- i. The successful proposer will be required to furnish certificate of insurance as required by insurance specification of the contract prior to the contract being issued and provide proof to city yearly or on demand.
- j. Proposers should be able to provide towing forms that provides information of each tow that is given to the public and report this information electronically to WPD on a daily basis.
- k. Proposer should be able to be registered with the KCC (Kansas Corporation Commission).
- l. Proposer should be able to be up to date with all state and local taxes.
- m. The proposer should be able to agree to crush vehicles that a VIN (Vehicle Identification Number) cannot be generated by the State of Kansas as directed by WPD staff.
- n. The proposer should be able to maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public daily from 7:30 a.m. to 6:00 p.m. Monday through Friday, 9:00 a.m. to 1:00 p.m. Saturday, so that owners may retrieve their vehicles. The office will be closed the following holiday's: New Years, Memorial Day, 4th of July, Labor Day, Thanksgiving and Christmas, and Sunday's
- q. The proposer should be able to be available 24 hours a day, seven days a week, and 365 days per year, to respond to calls for service.
- r. The proposer should identify if they are able to tow/store heavy-duty equipment/trucks and/or provide an alternative solution.
- s. The proposer should be able to tow multiple vehicles from a single location at one time.
- t. The WPD will issue a notice to the Proposer that will then allow it to auction each vehicle. Only vehicles with this WPD notice will be able to be auctioned.
- u. Upon notification from the WPD that a vehicle is to be picked up, the Proposer will record:
 - 1. The time the request was received.
 - 2. The time a tow unit is assigned.
 - 3. The location of tow request.
 - 4. The time the tow unit is on scene.
 - 5. The time vehicle arrives at storage facility.
 - 6. The total mileage of tow.
- v. Nothing in this agreement shall give the proposer the right for any purpose to have, use or display any logo, shield, numbers, insignia or emblems which in any way even resemble those used by the WPD.
- w. Proposer should be able to remove the license plate from vehicle schedule for sale as directed by WPD staff one business day prior to sale and keep in a centralized locations for WPD staff to recover.
- x. Proposers shall not remove ANY parts from vehicles prior to citizen pickup or auction.

6. Claims

The proposer shall not search the interior of each vehicle upon its entrance to the storage facility. Any property/contraband found in plain view or anywhere else in a vehicle shall

not be disturbed and the vehicle will be secured. Contraband is defined as any property that is not legal to possess or that can be used for evidentiary purposes. When in doubt, the proposer will be responsible for notifying the WPD. The discovery of contraband will be immediately reported to the WPD.

The proposer will digitally photograph all vehicles prior to hooking up the vehicle and when they enter and leave the facility. A minimum of nine (9) photos per vehicle shall be taken and emailed to WPD, Property & Evidence section. Photos shall be taken of at a minimum the front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, VIN numbers/s if applicable, vehicle keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available and interior (mainly the dash area to capture stereo equipment) and one photo including VIN numbers such photos will be stored by Wrecker Contractor for sixty (60) days or until vehicle is released and available for WPD, Property & Evidence staff to view and print pictures.

The proposer agrees to hold the City of Wichita and/or the WPD harmless of any and all theft or property damage of vehicles in the proposer's storage lot.

The proposer agrees to absorb all costs assessed against the City of Wichita and/ or WPD related to the theft of or from vehicles from the proposer's storage lot and/or property damage associated with vehicles as a result towing, storing, and releasing vehicles. Upon possession by the proposer of the vehicles contemplated under this agreement, the Department will no longer bear any risk of loss of or damage to the items. Moreover, the proposer shall indemnify the City, the Department and their respective successors, assigns, officers, directors, employees, shareholders and agents, and their heirs, distributees, executors or administrators against any claims made by the purchaser of vehicles sold at auction pursuant to the terms of this agreement. Should a vehicle be sold pursuant to the terms of this agreement need to be returned by the purchaser of the item, the WPD will only be responsible for returning the portion of the sales price that was remitted to it by proposer under the terms of this contract.

7. Personnel

- a. The proposer's employees will act courteously, respectfully, and responsibly toward each rightful owner or agent of each vehicle towed, stored, and released.
- b. The proposer's employees will cooperate with all WPD personnel in any matters related to the storage of vehicles when requested to do so.
- c. The proposer is responsible to retain all vehicle keys that are received at the time of the initial towing of the vehicle. Information pertaining to the existence of the keys should be provided to the auction service. Contracts will be cancelled within thirty (30) of Towing Firm(s) that are not complying with this requirement.
- d. The proposer's employees will ensure that no part or property is removed from any vehicle that is towed or stored by the proposer. If any contraband is found by the proposer and its employees, or the sub proposer and its employees, the proposer *must* notify the WPD immediately. The WPD reserves the right to conduct a legal search of any and all vehicles stored by the proposer.

8. Security

Perimeter Fencing

- a. Each storage lot perimeter will be enclosed by a security fence or wall and will be kept free of weeds, rubbish, or other material able of offering concealment or assistance to an intruder attempting to breach the barrier.
- b. The perimeter fence will completely enclose the area where WPD-invoiced vehicles are secured.

Lighting

- a. The area and structure within the property's general boundaries will be well lit.
- b. The lighting around the perimeter of a location should be uniform.
- c. Light fixtures will be maintained, re-lamped, and cleaned when necessary.
- d. Security camera will be required to record the entire area where WPD police initiated tows are stored 365 days per year, 24 hours per day. Security tapes will be kept for 30 days.

9. Taxes

The proposer shall pay all City, city, state and federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price between the City and the proposer, as the taxes shall be an obligation of the proposer and not of the City, and the City shall be held harmless for same by the proposer.

The City of Wichita is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption certificates will be furnished upon request.

10. All surplus items are sold "As is - No Warranty - Where is" and must be removed from the premises within the time and dates identified in the auction listing. All sales final, no refunds, no returns and no exchanges.

First Published in the *Wichita Eagle* on June 10, 2022

ORDINANCE NO. 51-864

AN ORDINANCE CREATING SECTION 11.97.055 OF THE CODE OF THE CITY OF WICHITA, KANSAS PERTAINING TO THE ESTABLISHMENT OF A PAYMENT PLAN PROGRAM FOR ASSISTANCE WITH PAYMENT OF IMPOUND FEES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 11.97.055 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Establishment of Payment Plan Program for Assistance with Payment of Impound Fees.

a. Indigent Payment Plan

The City Manager is authorized to establish an installment payment program for indigent motor vehicle owners who are unable to pay fees incurred due to the impoundment of their motor vehicle pursuant to Section 11.97.010. Such program shall be consistent with the guidelines set forth below:

1. The owner (or renter) of the towed vehicle must be an individual. Businesses, including partnerships, trusts, for-profit corporations, and nonprofit corporations are not eligible to participate in the program.

2. All requests for assistance must be received within five (5) calendar days from the date of the tow or impound of the motor vehicle.
3. The owner must show proof of valid registration and ownership of the motor vehicle.
4. The owner must provide proof of indigence status.
5. The payment plan should provide for monthly installments of no more than twenty-five dollars (\$25) for total amounts not to exceed six hundred dollars (\$600). All fees should be paid within twenty-four (24) months.
6. The plan will limit repayment of the City's processing fee collected from impound contractors to five dollars (\$5) or less for indigent persons.
7. Owners may only participate in one payment plan at any given time.

b. Homeless Fee Waiver

1. The City Manager is also authorized to establish a program to provide a one-time waiver of impound fees, not to exceed \$600, for individuals who are homeless.

2. Only individuals who are receiving homeless services and who are registered with the Homeless Information Services System at the time of impoundment of the motor vehicle are eligible for the waiver.

c. Reporting

A report regarding the number of payment plans approved, funds collected, and any funds waived will be submitted to the City Council in July 2023 so that Council may evaluate the continued need for and effectiveness of the program.”

SECTION 2. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 7th day of June, 2022.

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer Magaña
City Attorney and Director of Law

AGREEMENT FOR IMPOUND SERVICES
Wrecker Contractor

THIS AGREEMENT is made between the City of Wichita, Kansas (hereinafter referred to as the City) and Kidd's Towing, 4740 W Esthner, Wichita, KS 67209, Telephone (316)945-8697, (hereinafter referred to as the Wrecker Contractor) on the 1st day of June, 2022.

WHEREAS, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

WHEREAS, the CITY has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – 210382; and

WHEREAS, the City has sought competitive proposals for this purpose under Proposal No. 210382, and two (2) Wrecker Contractors have submitted the proposal beneficial to the City; and

WHEREAS, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

WHEREAS K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

NOW, THEREFORE, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about June 1, 2022. The term of this contract shall be from June 1, 2022, through May 31, 2023, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on June 1, 2022.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the CITY those services specified in its response to Formal Proposal Number – 210382, which are incorporated herein by this reference the same as if it were fully set forth. Any additional requirements as set out in the City of Wichita request for proposal letting process for 210392 shall be included as Addendum D to this agreement.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched for all calls within the City limits shall be made within 45 minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Will tow heavy-duty equipment/trucks. If a company of Wrecker Contractor that is called is unable to tow vehicle because of it is a heavy-duty equipment/trucks, that company may contract with any other company of Wrecker Contractor to remove the vehicle to the company's lot.

Is able to tow multiple vehicles from a single location at one time. If a company of Wrecker Contractor is unable to remove all of the vehicles from a single location at one time that company may contract with any other company of Wrecker Contractor to remove the vehicle(s) to the company's lot.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit C.

Rare & Specialized.

Rare specialized tows, such as overturned vehicle or submerged or partially submerged vehicles will be approved by a WPD supervisor on-site per the stated impound fees.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public: Monday thru Friday from 7:30 a.m. to 6:00 p.m., Saturday 10:00 a.m. to 2:00 p.m. so that the owners may retrieve their vehicles. The office will be closed for the following holidays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas. Storage will be charged at the normal rate for these days, except if a customer is released their vehicle within three (3) business days after a Holiday or Sunday that the office was closed, storage for that Holiday or Sunday will not be charged.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up to date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at

the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

b. Reporting

Wrecker Contractor will be required to furnish the following electronic monthly reports to the Wichita Police Department by the 10th day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Electronic monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These electronic reports shall be electronically emailed to Wichita Police Department staff by the 10th day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at thirty dollars (\$30) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction service. Wrecker Contractor shall notify the Wichita Police

Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. Wrecker Contractor will not remove ANY parts from vehicle prior to citizen pickup or auction. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit C attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may direct Wrecker Contractor to tow impounded vehicle located within the city limits from that specific location to a designated Wichita Police property. The maximum fee for such a tow for a vehicle that is upright on four wheels will be capped at a maximum of one hundred and forty dollars (\$140) tow fee. Fees outlined in Exhibit C will be charged to the City for any other tow.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, six (6) days per week, and except for the stated previous holidays. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will pay the City one hundred and twenty five dollars (\$125) for every auctioned vehicle. However, no payment will be made to the City for a vehicle that does not sell for at least the amount owed to the Wrecker Contractor for towing, loaded mile fee, and the following tow fees only if the tow required the following services: Overturn/Rollover, Dolly Services, Winching, Heavy Duty towing. Wrecker Contractor will provide WPD the tow bill with detailed costs of each item that were incurred by the Wrecker Contractor for each vehicle sold at the auction. If the amount received at auction exceeds the amount of costs listed in this paragraph incurred by Wrecker Contractor, then Wrecker Contractor will forward the excess auction amount up to the one hundred twenty-five (\$125) to the City within 30 days of and receipt of payment for the sale. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on

behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.

- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.
- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation with ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Suspension of Contract Terms due to Billing Errors.***

For impound invoices for tows occurring after May 3, 2022, the identification of two or more invoice errors by WPD staff and agreed upon by the Contractor during a thirty (30) day period, following written notification to the Wrecker Contractor, may result in a suspension of the Wrecker Contractor. Such suspension shall be for to ten (10) days. The

continued or repeated submission of invoices containing billing errors may result in termination of the contract.

XII. **Governing Law.** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.

XIII. **Waivers.** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIV. **Representatives of Contracting Parties.** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee
Wichita Police Department
455 N. Main 4th floor
Wichita, Kansas 67202
316-268-4158

(b) Representing the Wrecker Contractor:

Kidd's Towing
4740 W Esthner
Wichita, KS 67209
316-945-8697

XV. **Insurance and Indemnification.**

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
---	---

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
---	---------------------------

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
---------------------	-------------------------

4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XVI. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.

XVII. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

XVIII. **Compliance with Laws.** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.

XIX. **Representative's Authority to Contract.** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Attest:

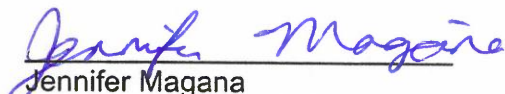
City of Wichita, KS

Karen Sublett
City Clerk

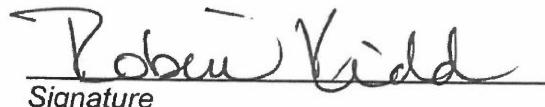
Brandon Whipple
Mayor

Approved as to Form:

Kidd's Towing



Jennifer Magana
City Attorney and Director of Law



Signature

Roben Kidd
Print Name

Owner
Title (President or Corporate Officer)

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability:** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as

authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the VENDOR under this Contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the CITY.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

(Rev. 1/3/2022)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder.
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

EXHIBIT C

WRECKER FEES

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$120 the below charges can only be added IF APPLICABLE.

1. Hook/Roll Back Light Duty Towing - \$105 hook up fee
2. Loaded Mile - \$4.50 per loaded mile
3. Overturn/Rollover - \$45
4. Dolly Service - \$43
5. Rollback Fee - \$55
6. Winching - \$25 per every 15 minutes
7. Waiting Time - \$15 per every 15 minutes
8. Storage - \$30 per day; heavy duty storage per day
9. Tarp Fee - \$20
10. Oil Dry - \$25
11. Lot Fee - \$20
12. Heavy Duty Towing - \$250 per hour
13. Heavy Duty Storage - \$50 per day
14. Low Boy - \$250 per hour
15. WPD Processing Fee for 1st Notices - \$30
16. Verification and Certifications - \$20 after the ten (10) business day waiting period, only to those vehicles that have not been pickup and for those vehicles that the Wrecker Contractor has actually completed and processed a title verification for that vehicle.

Fees for Hook/Rollback Light Duty Towing, Loaded Mile, Overturn/Rollover, Dolly Service, Storage and Heavy-Duty Towing and Storage will increase by four percent (4%) each year of the contract. Prices shall be rounded to the nearest dollar.

Oversized Trailers, Campers and/or Recreational Vehicles

The Wrecker Contractor may tow these types of vehicles to the Wrecker Contractor's lot at their discretion. Rates listed above in Exhibit C shall be charged. If Wrecker Contractor chooses to tow these types of vehicles to their lot

and the vehicle is not picked up, vehicle will go to auction. Wrecker Contractor vehicle will pay the City \$125 if the vehicle sold at auction per Section V of the agreement. If the vehicle does not sell at an auction, then the Wichita Police Department will pay the Wrecker Contractor the initial tow amount with a not to exceed amount of three hundred dollars (\$300) and another three hundred dollars (\$300) to tow vehicle to landfill and pay the disposal fee once the court order has been approved by WPD supervisor.

If Wrecker Contractor chooses not to tow to their lot, City may direct Wrecker Contractor to tow to a City lot of the City's choice. Regular fees for towing will apply. However, amount will not exceed three hundred dollars (\$300) unless authorized by a Police supervisor.

Exhibit D

SCOPE OF SERVICES

The proposer should be capable to provide a 24/7 full customer service program to WPD that is able of providing towing services, storage, ability to collect payments from owners during business hours that are willing to pick up and pay for the towing and storage fees for their vehicles and/or sell off vehicles (property) that have been deemed as unclaimed property, with all the legal proper notifications handled by WPD. Towing firm(s) should have the capability to provide customer service to citizens that come to the tow firm(s) facility to pay the established fees and pick up their vehicles and property. Citizens should be able to pay Towing Firms for their invoiced property by certified check, electronic funds transfer, cash, or credit card. In providing these services, the proposer agrees to fully comply with the terms, conditions, and representations of its program.

WPD will notify the tow firm(s) of when the unclaimed property can be sold at a public auction. The proposer will include payment of (\$125) two hundred dollars for each impound vehicle that was sold in an auction.

The towing firm(s) and/or on-line auction proposer should be able of providing the following services.

1. Proposer should be able to provide or contract with an auction service that has the necessary computer hardware and software, as well as provide related support services required for conducting and management of an on-line website auctioning services or contracting with a third party including:

Training in the use of the proposed system

Customer Support

Maintain a web site accessibility rate of at least 98%

PCI compliant in safeguarding the website

The proposer should be capable to document the ability for the auction service to incorporate digital photography into the advertisements for individual vehicles and misc. items that are put up for sale on the auction site, maintenance of complete and accurate records of the bidding for each of the auction items, chronology of the bidding for each of the auction items and the awarded price.

The recommended auction services should document the development, installation and maintenance of an adequate information systems on its website(s) to guide prospective proposers through the entire website, bidding, award of bid, payment, delivery and general information requirements of prospective proposers as well as a customer service functions for the benefit of proposers. Proposers should be able to document its capability to include information modules on its website for WPD staff to track status of vehicles and misc. items

listed for auction sales and demonstrate the demographics of registered bidders on their auction website with at least a minimum of 50,000 registered bidders or provide the number of registered bidders and demographics, which will be evaluated and determined by staff the most beneficial for WPD.

If the WPD discovers any objectionable material on Web pages utilized by the proposer to sell WPD property, the WPD reserves the right to demand the removal of such objectionable material. If such objectionable material is not removed immediately, then the WPD reserves the right to discontinue Internet auctions of its invoiced property.

The successful proposer should be able to maintain and manage the online auction services to include:

- a. The proposer should be able to provide advertising for auctions at the proposer's expense.
- b. The proposer should be able to have or develop a website that meets or exceeds current industry practice standards with regard to user security.
- c. The proposer should be able to commit to ongoing efforts in attracting in state, national proposers to its online auction to maximize sales price.
- d. Have the ability to auction cars weekly. Our current practice is to conduct monthly auctions to minimize any storage charges and maximize the revenue to the city.
- e. Provide an electronic database that tracks all vehicle transaction history from pick-up to final disposition.
- f. Provide the WPD daily access to this electronic database and the subsequent reports and inventory status of every vehicle.
- g. The proposer should be able to complete title affidavits and bill of sales for vehicles sold at auction.
- h. Auction format similar to established current on-line auctions (i.e., E-bay) with familiar prompts and navigation for easy access to auction items.
- i. Pre-qualify and register all proposers so that bid manipulation is eliminated and provide fraud detection and prevention features.
- j. Provide dedicated Customer Service representative.

2. Proposers should be able to provide a list of other agencies, preferably governmental, which the proposer has currently and previously done business. Provide documentation of any viable experience or plans to develop in the operation of online auctioning services or proposed sub-contracting ventures. Such experience shall include posting on proposer's web site(s), operation of an online bidding system permitting continuous, 24 hour, real-time bidding and validation of bids and documentation of high proposer and collections along with supporting documentation for the City of Wichita audit process.

3. WPD reserves the right to have any vehicle returned to the possession of vehicle back to WPD, or its rightful owner, prior to auction even if the item has already been collected by proposer.

4. WPD shall conduct regular and unannounced random inspections of any and all facilities 24 hours a day, seven days per week, and 365 days per year. The proposer will allow the WPD to monitor all administrative functions associated with WPD vehicles taken into their custody.

The successful firm(s) will be required to furnish the following reports to the WPD or when requested by WPD:

A detailed client list and shipping list.

Monthly reports of all of the WPD items of invoiced vehicle property that has been sold by proposer and the prices at which any such items were sold. This report shall include shipping and handling fees as well as sales taxes and credit card fees on each item.

Quarterly (un-audited) and annual (audited) financial Statements.

Monthly reports of all of the WPD's invoiced property on hand.

Monthly statements of returns of the invoiced property of the WPD that have been purchased at auction and the complaints of any purchasers.

Record Retention/ Audits: The successful proposer shall retain, during the performance of the contract and for a period of three years from the completion of the contract, all records pertaining to the successful proposer's proposal and vehicles impounded by the Wichita Police Department. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including proposer copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and within three (3) days from the date of the notice during the successful proposer's normal working hours.

City personnel may perform in-progress and post-audits of proposer's records as a result of a contract awarded pursuant to this Request for Proposals. Files would be available on demand and without notice during normal working hours.

5. The successful towing firm(s) proposer should be able to maintain and manage the listed services and/or provide a proposal to meet the objectives that are listed below to include:

- a. The proposer should be capable of responding to a police dispatched calls within 45 minutes of the time the call is received by WPD's dispatch.
- b. The proposer should be able to have a minimum of three tow trucks as per City Code 3.49 to be able to meet the daily needs of WPD.
- c. Proposer should be able to be responsible for removing all debris from any police accident scene.
- d. Proposer should be able to have all tow trucks marked appropriately with the company name.
- e. Proposer employees will wear appropriate clothing that shows the name of their company.
- f. City of Wichita has the right to suspend any contractor if two or more documented complaints are received, researched and proven.

- g. The proposer should be able to show experience in dealing with the public in returning vehicles that were towed insuring that systems are in place to make sure that releases are controlled by WPD.
- h. Proposer should be able of inspecting tow trucks to meet city requirements set forth in the contract.
- i. The successful proposer will be required to furnish certificate of insurance as required by insurance specification of the contract prior to the contract being issued and provide proof to city yearly or on demand.
- j. Proposers should be able to provide towing forms that provides information of each tow that is given to the public and report this information electronically to WPD on a daily basis.
- k. Proposer should be able to be registered with the KCC (Kansas Corporation Commission).
- l. Proposer should be able to be up to date with all state and local taxes.
- m. The proposer should be able to agree to crush vehicles that a VIN (Vehicle Identification Number) cannot be generated by the State of Kansas as directed by WPD staff.
- n. The proposer should be able to maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public daily from 7:30 a.m. to 6:00 p.m. Monday through Friday, 9:00 a.m. to 1:00 p.m. Saturday, so that owners may retrieve their vehicles. The office will be closed the following holiday's: New Years, Memorial Day, 4th of July, Labor Day, Thanksgiving and Christmas, and Sunday's
- q. The proposer should be able to be available 24 hours a day, seven days a week, and 365 days per year, to respond to calls for service.
- r. The proposer should identify if they are able to tow/store heavy-duty equipment/trucks and/or provide an alternative solution.
- s. The proposer should be able to tow multiple vehicles from a single location at one time.
- t. The WPD will issue a notice to the Proposer that will then allow it to auction each vehicle. Only vehicles with this WPD notice will be able to be auctioned.
- u. Upon notification from the WPD that a vehicle is to be picked up, the Proposer will record:
 - 1. The time the request was received.
 - 2. The time a tow unit is assigned.
 - 3. The location of tow request.
 - 4. The time the tow unit is on scene.
 - 5. The time vehicle arrives at storage facility.
 - 6. The total mileage of tow.
- v. Nothing in this agreement shall give the proposer the right for any purpose to have, use or display any logo, shield, numbers, insignia or emblems which in any way even resemble those used by the WPD.
- w. Proposer should be able to remove the license plate from vehicle schedule for sale as directed by WPD staff one business day prior to sale and keep in a centralized locations for WPD staff to recover.
- x. Proposers shall not remove ANY parts from vehicles prior to citizen pickup or auction.

6. Claims

The proposer shall not search the interior of each vehicle upon its entrance to the storage facility. Any property/contraband found in plain view or anywhere else in a vehicle shall

not be disturbed and the vehicle will be secured. Contraband is defined as any property that is not legal to possess or that can be used for evidentiary purposes. When in doubt, the proposer will be responsible for notifying the WPD. The discovery of contraband will be immediately reported to the WPD.

The proposer will digitally photograph all vehicles prior to hooking up the vehicle and when they enter and leave the facility. A minimum of nine (9) photos per vehicle shall be taken and emailed to WPD, Property & Evidence section. Photos shall be taken of at a minimum the front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, VIN numbers/s if applicable, vehicle keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available and interior (mainly the dash area to capture stereo equipment) and one photo including VIN numbers such photos will be stored by Wrecker Contractor for sixty (60) days or until vehicle is released and available for WPD, Property & Evidence staff to view and print pictures.

The proposer agrees to hold the City of Wichita and/or the WPD harmless of any and all theft or property damage of vehicles in the proposer's storage lot.

The proposer agrees to absorb all costs assessed against the City of Wichita and/ or WPD related to the theft of or from vehicles from the proposer's storage lot and/or property damage associated with vehicles as a result towing, storing, and releasing vehicles.

Upon possession by the proposer of the vehicles contemplated under this agreement, the Department will no longer bear any risk of loss of or damage to the items. Moreover, the proposer shall indemnify the City, the Department and their respective successors, assigns, officers, directors, employees, shareholders and agents, and their heirs, distributees, executors or administrators against any claims made by the purchaser of vehicles sold at auction pursuant to the terms of this agreement. Should a vehicle be sold pursuant to the terms of this agreement need to be returned by the purchaser of the item, the WPD will only be responsible for returning the portion of the sales price that was remitted to it by proposer under the terms of this contract.

7. Personnel

a. The proposer's employees will act courteously, respectfully, and responsibly toward each rightful owner or agent of each vehicle towed, stored, and released.

b. The proposer's employees will cooperate with all WPD personnel in any matters related to the storage of vehicles when requested to do so.

c. The proposer is responsible to retain all vehicle keys that are received at the time of the initial towing of the vehicle. Information pertaining to the existence of the keys should be provided to the auction service. Contracts will be cancelled within thirty (30) of Towing Firm(s) that are not complying with this requirement.

d. The proposer's employees will ensure that no part or property is removed from any vehicle that is towed or stored by the proposer. If any contraband is found by the proposer and its employees, or the sub proposer and its employees, the proposer *must* notify the WPD immediately. The WPD reserves the right to conduct a legal search of any and all vehicles stored by the proposer.

8. Security

Perimeter Fencing

- a. Each storage lot perimeter will be enclosed by a security fence or wall and will be kept free of weeds, rubbish, or other material able of offering concealment or assistance to an intruder attempting to breach the barrier.
- b. The perimeter fence will completely enclose the area where WPD-invoiced vehicles are secured.

Lighting

- a. The area and structure within the property's general boundaries will be well lit.
- b. The lighting around the perimeter of a location should be uniform.
- c. Light fixtures will be maintained, re-lamped, and cleaned when necessary.
- d. Security camera will be required to record the entire area where WPD police initiated tows are stored 365 days per year, 24 hours per day. Security tapes will be kept for 30 days.

9. Taxes

The proposer shall pay all City, city, state and federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price between the City and the proposer, as the taxes shall be an obligation of the proposer and not of the City, and the City shall be held harmless for same by the proposer.

The City of Wichita is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption certificates will be furnished upon request.

- 10. All surplus items are sold "As is - No Warranty - Where is" and must be removed from the premises within the time and dates identified in the auction listing. All sales final, no refunds, no returns and no exchanges.

AGREEMENT FOR IMPOUND SERVICES
Wrecker Contractor

THIS AGREEMENT is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Tow All, 4740 W Esthner, Wichita, KS 67209**, Telephone (316)945-8697, (hereinafter referred to as the Wrecker Contractor) on the 1st day of June, 2022.

WHEREAS, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

WHEREAS, the CITY has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – 210382; and

WHEREAS, the City has sought competitive proposals for this purpose under Proposal No. 210382, and two (2) Wrecker Contractors have submitted the proposal beneficial to the City; and

WHEREAS, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

WHEREAS K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

NOW, THEREFORE, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about June 1, 2022. The term of this contract shall be from June 1, 2022, through May 31, 2023, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on June 1, 2022.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the CITY those services specified in its response to Formal Proposal Number – 210382, which are incorporated herein by this reference the same as if it were fully set forth. Any additional requirements as set out in the City of Wichita request for proposal letting process for 210392 shall be included as Addendum D to this agreement.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched for all calls within the City limits shall be made within 45 minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Will tow heavy-duty equipment/trucks. If a company of Wrecker Contractor that is called is unable to tow vehicle because of it is a heavy-duty equipment/trucks, that company may contract with any other company of Wrecker Contractor to remove the vehicle to the company's lot.

Is able to tow multiple vehicles from a single location at one time. If a company of Wrecker Contractor is unable to remove all of the vehicles from a single location at one time that company may contract with any other company of Wrecker Contractor to remove the vehicle(s) to the company's lot.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit C.

Rare & Specialized.

Rare specialized tows, such as overturned vehicle or submerged or partially submerged vehicles will be approved by a WPD supervisor on-site per the stated impound fees.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public: Monday thru Friday from 7:30 a.m. to 6:00 p.m., Saturday 10:00 a.m. to 2:00 p.m. so that the owners may retrieve their vehicles. The office will be closed for the following holidays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas. Storage will be charged at the normal rate for these days, except if a customer is released their vehicle within three (3) business days after a Holiday or Sunday that the office was closed, storage for that Holiday or Sunday will not be charged.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up to date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at

the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

b. Reporting

Wrecker Contractor will be required to furnish the following electronic monthly reports to the Wichita Police Department by the 10th day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Electronic monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These electronic reports shall be electronically emailed to Wichita Police Department staff by the 10th day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at thirty dollars (\$30) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction service. Wrecker Contractor shall notify the Wichita Police

Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. Wrecker Contractor will not remove ANY parts from vehicle prior to citizen pickup or auction. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit C attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may direct Wrecker Contractor to tow impounded vehicle located within the city limits from that specific location to a designated Wichita Police property. The maximum fee for such a tow for a vehicle that is upright on four wheels will be capped at a maximum of one hundred and forty dollars (\$140) tow fee. Fees outlined in Exhibit C will be charged to the City for any other tow.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, six (6) days per week, and except for the stated previous holidays. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will pay the City one hundred and twenty five dollars (\$125) for every auctioned vehicle. However, no payment will be made to the City for a vehicle that does not sell for at least the amount owed to the Wrecker Contractor for towing, loaded mile fee, and the following tow fees only if the tow required the following services: Overturn/Rollover, Dolly Services, Winching, Heavy Duty towing. Wrecker Contractor will provide WPD the tow bill with detailed costs of each item that were incurred by the Wrecker Contractor for each vehicle sold at the auction. If the amount received at auction exceeds the amount of costs listed in this paragraph incurred by Wrecker Contractor, then Wrecker Contractor will forward the excess auction amount up to the one hundred twenty-five (\$125) to the City within 30 days of and receipt of payment for the sale. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on

behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.

- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.
- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation with ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Suspension of Contract Terms due to Billing Errors.***

For impound invoices for tows occurring after May 3, 2022, the identification of two or more invoice errors by WPD staff and agreed upon by the Contractor during a thirty (30) day period, following written notification to the Wrecker Contractor, may result in a suspension of the Wrecker Contractor. Such suspension shall be for to ten (10) days. The

continued or repeated submission of invoices containing billing errors may result in termination of the contract.

XII. **Governing Law.** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.

XIII. **Waivers.** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIV. **Representatives of Contracting Parties.** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee
Wichita Police Department
455 N. Main 4th floor
Wichita, Kansas 67202
316-268-4158

(b) Representing the Wrecker Contractor:

Tow All
4740 W Esthner
Wichita, KS 67209
316-945-8697

XV. **Insurance and Indemnification.**

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
---	---

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
---	---------------------------

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
---------------------	-------------------------

4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XVI. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.

- XVII. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- XVIII. **Compliance with Laws.** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.
- XIX. **Representative's Authority to Contract.** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Attest:

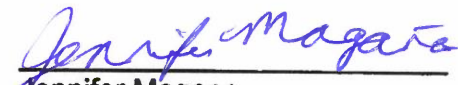
City of Wichita, KS

Karen Sublett
City Clerk

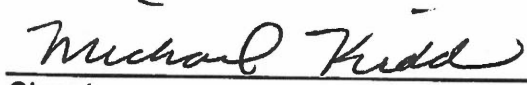
Brandon Whipple
Mayor

Approved as to Form:

Tow All



Jennifer Magana
City Attorney and Director of Law



Signature



Print Name



Title (President or Corporate Officer)

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability:** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as

authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

(Rev. 1/3/2022)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

EXHIBIT C

WRECKER FEES

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$120 the below charges can only be added IF APPLICABLE.

1. Hook/Roll Back Light Duty Towing - \$105 hook up fee
2. Loaded Mile - \$4.50 per loaded mile
3. Overturn/Rollover - \$45
4. Dolly Service - \$43
5. Roll Back Fee - \$55
6. Winching - \$25 per every 15 minutes
7. Waiting Time - \$15 per every 15 minutes
8. Storage - \$30 per day; heavy duty storage per day
9. Tarp Fee - \$20
10. Oil Dry - \$25
11. Lot Fee - \$20
12. Heavy Duty Towing - \$250 per hour
13. Heavy Duty Storage - \$50 per day
14. Low Boy - \$250 per hour
15. WPD Processing Fee for 1st Notices - \$30
16. Verification and Certifications - \$20 after the ten (10) business day waiting period, only to those vehicles that have not been pickup and for those vehicles that the Wrecker Contractor has actually completed and processed a title verification for that vehicle.

Fees for Hook/Rollback Light Duty Towing, Loaded Mile, Overturn/Rollover, Dolly Service, Storage and Heavy-Duty Towing and Storage will increase by four percent (4%) each year of the contract. Prices shall be rounded to the nearest dollar.

Oversized Trailers, Campers and/or Recreational Vehicles

The Wrecker Contractor may tow these types of vehicles to the Wrecker Contractor's lot at their discretion. Rates listed above in Exhibit C shall be charged. If Wrecker Contractor chooses to tow these types of vehicles to their lot

and the vehicle is not picked up, vehicle will go to auction. Wrecker Contractor vehicle will pay the City \$125 if the vehicle sold at auction per Section V of the agreement. If the vehicle does not sell at an auction, then the Wichita Police Department will pay the Wrecker Contractor the initial tow amount with a not to exceed amount of three hundred dollars (\$300) and another three hundred dollars (\$300) to tow vehicle to landfill and pay the disposal fee once the court order has been approved by WPD supervisor.

If Wrecker Contractor chooses not to tow to their lot, City may direct Wrecker Contractor to tow to a City lot of the City's choice. Regular fees for towing will apply. However, amount will not exceed three hundred dollars (\$300) unless authorized by a Police supervisor.

Exhibit D

SCOPE OF SERVICES

The proposer should be capable to provide a 24/7 full customer service program to WPD that is able of providing towing services, storage, ability to collect payments from owners during business hours that are willing to pick up and pay for the towing and storage fees for their vehicles and/or sell off vehicles (property) that have been deemed as unclaimed property, with all the legal proper notifications handled by WPD. Towing firm(s) should have the capability to provide customer service to citizens that come to the tow firm(s) facility to pay the established fees and pick up their vehicles and property. Citizens should be able to pay Towing Firms for their invoiced property by certified check, electronic funds transfer, cash, or credit card. In providing these services, the proposer agrees to fully comply with the terms, conditions, and representations of its program.

WPD will notify the tow firm(s) of when the unclaimed property can be sold at a public auction. The proposer will include payment of (\$125) two hundred dollars for each impound vehicle that was sold in an auction.

The towing firm(s) and/or on-line auction proposer should be able of providing the following services.

1. Proposer should be able to provide or contract with an auction service that has the necessary computer hardware and software, as well as provide related support services required for conducting and management of an on-line website auctioning services or contracting with a third party including:

Training in the use of the proposed system

Customer Support

Maintain a web site accessibility rate of at least 98%

PCI compliant in safeguarding the website

The proposer should be capable to document the ability for the auction service to incorporate digital photography into the advertisements for individual vehicles and misc. items that are put up for sale on the auction site, maintenance of complete and accurate records of the bidding for each of the auction items, chronology of the bidding for each of the auction items and the awarded price.

The recommended auction services should document the development, installation and maintenance of an adequate information systems on its website(s) to guide prospective proposers through the entire website, bidding, award of bid, payment, delivery and general information requirements of prospective proposers as well as a customer service functions for the benefit of proposers. Proposers should be able to document its capability to include information modules on its website for WPD staff to track status of vehicles and misc. items

listed for auction sales and demonstrate the demographics of registered bidders on their auction website with at least a minimum of 50,000 registered bidders or provide the number of registered bidders and demographics, which will be evaluated and determined by staff the most beneficial for WPD.

If the WPD discovers any objectionable material on Web pages utilized by the proposer to sell WPD property, the WPD reserves the right to demand the removal of such objectionable material. If such objectionable material is not removed immediately, then the WPD reserves the right to discontinue Internet auctions of its invoiced property.

The successful proposer should be able to maintain and manage the online auction services to include:

- a. The proposer should be able to provide advertising for auctions at the proposer's expense.
- b. The proposer should be able to have or develop a website that meets or exceeds current industry practice standards with regard to user security.
- c. The proposer should be able to commit to ongoing efforts in attracting in state, national proposers to its online auction to maximize sales price.
- d. Have the ability to auction cars weekly. Our current practice is to conduct monthly auctions to minimize any storage charges and maximize the revenue to the city.
- e. Provide an electronic database that tracks all vehicle transaction history from pick-up to final disposition.
- f. Provide the WPD daily access to this electronic database and the subsequent reports and inventory status of every vehicle.
- g. The proposer should be able to complete title affidavits and bill of sales for vehicles sold at auction.
- h. Auction format similar to established current on-line auctions (i.e., E-bay) with familiar prompts and navigation for easy access to auction items.
- i. Pre-qualify and register all proposers so that bid manipulation is eliminated and provide fraud detection and prevention features.
- j. Provide dedicated Customer Service representative.

2. Proposers should be able to provide a list of other agencies, preferably governmental, which the proposer has currently and previously done business. Provide documentation of any viable experience or plans to develop in the operation of online auctioning services or proposed sub-contracting ventures. Such experience shall include posting on proposer's web site(s), operation of an online bidding system permitting continuous, 24 hour, real-time bidding and validation of bids and documentation of high proposer and collections along with supporting documentation for the City of Wichita audit process.

3. WPD reserves the right to have any vehicle returned to the possession of vehicle back to WPD, or its rightful owner, prior to auction even if the item has already been collected by proposer.

4. WPD shall conduct regular and unannounced random inspections of any and all facilities 24 hours a day, seven days per week, and 365 days per year. The proposer will allow the WPD to monitor all administrative functions associated with WPD vehicles taken into their custody.

The successful firm(s) will be required to furnish the following reports to the WPD or when requested by WPD:

A detailed client list and shipping list.

Monthly reports of all of the WPD items of invoiced vehicle property that has been sold by proposer and the prices at which any such items were sold. This report shall include shipping and handling fees as well as sales taxes and credit card fees on each item.

Quarterly (un-audited) and annual (audited) financial Statements.

Monthly reports of all of the WPD's invoiced property on hand.

Monthly statements of returns of the invoiced property of the WPD that have been purchased at auction and the complaints of any purchasers.

Record Retention/ Audits: The successful proposer shall retain, during the performance of the contract and for a period of three years from the completion of the contract, all records pertaining to the successful proposer's proposal and vehicles impounded by the Wichita Police Department. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including proposer copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and within three (3) days from the date of the notice during the successful proposer's normal working hours.

City personnel may perform in-progress and post-audits of proposer's records as a result of a contract awarded pursuant to this Request for Proposals. Files would be available on demand and without notice during normal working hours.

5. The successful towing firm(s) proposer should be able to maintain and manage the listed services and/or provide a proposal to meet the objectives that are listed below to include:

- a. The proposer should be capable of responding to a police dispatched calls within 45 minutes of the time the call is received by WPD's dispatch.
- b. The proposer should be able to have a minimum of three tow trucks as per City Code 3.49 to be able to meet the daily needs of WPD.
- c. Proposer should be able to be responsible for removing all debris from any police accident scene.
- d. Proposer should be able to have all tow trucks marked appropriately with the company name.
- e. Proposer employees will wear appropriate clothing that shows the name of their company.
- f. City of Wichita has the right to suspend any contractor if two or more documented complaints are received, researched and proven.

- g. The proposer should be able to show experience in dealing with the public in returning vehicles that were towed insuring that systems are in place to make sure that releases are controlled by WPD.
- h. Proposer should be able of inspecting tow trucks to meet city requirements set forth in the contract.
- i. The successful proposer will be required to furnish certificate of insurance as required by insurance specification of the contract prior to the contract being issued and provide proof to city yearly or on demand.
- j. Proposers should be able to provide towing forms that provides information of each tow that is given to the public and report this information electronically to WPD on a daily basis.
- k. Proposer should be able to be registered with the KCC (Kansas Corporation Commission).
- l. Proposer should be able to be up to date with all state and local taxes.
- m. The proposer should be able to agree to crush vehicles that a VIN (Vehicle Identification Number) cannot be generated by the State of Kansas as directed by WPD staff.
- n. The proposer should be able to maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public daily from 7:30 a.m. to 6:00 p.m. Monday through Friday, 9:00 a.m. to 1:00 p.m. Saturday, so that owners may retrieve their vehicles. The office will be closed the following holiday's: New Years, Memorial Day, 4th of July, Labor Day, Thanksgiving and Christmas, and Sunday's
- q. The proposer should be able to be available 24 hours a day, seven days a week, and 365 days per year, to respond to calls for service.
- r. The proposer should identify if they are able to tow/store heavy-duty equipment/trucks and/or provide an alternative solution.
- s. The proposer should be able to tow multiple vehicles from a single location at one time.
- t. The WPD will issue a notice to the Proposer that will then allow it to auction each vehicle. Only vehicles with this WPD notice will be able to be auctioned.
- u. Upon notification from the WPD that a vehicle is to be picked up, the Proposer will record:
 - 1. The time the request was received.
 - 2. The time a tow unit is assigned.
 - 3. The location of tow request.
 - 4. The time the tow unit is on scene.
 - 5. The time vehicle arrives at storage facility.
 - 6. The total mileage of tow.
- v. Nothing in this agreement shall give the proposer the right for any purpose to have, use or display any logo, shield, numbers, insignia or emblems which in any way even resemble those used by the WPD.
- w. Proposer should be able to remove the license plate from vehicle schedule for sale as directed by WPD staff one business day prior to sale and keep in a centralized locations for WPD staff to recover.
- x. Proposers shall not remove ANY parts from vehicles prior to citizen pickup or auction.

6. Claims

The proposer shall not search the interior of each vehicle upon its entrance to the storage facility. Any property/contraband found in plain view or anywhere else in a vehicle shall

not be disturbed and the vehicle will be secured. Contraband is defined as any property that is not legal to possess or that can be used for evidentiary purposes. When in doubt, the proposer will be responsible for notifying the WPD. The discovery of contraband will be immediately reported to the WPD.

The proposer will digitally photograph all vehicles prior to hooking up the vehicle and when they enter and leave the facility. A minimum of nine (9) photos per vehicle shall be taken and emailed to WPD, Property & Evidence section. Photos shall be taken of at a minimum the front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, VIN numbers/s if applicable, vehicle keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available and interior (mainly the dash area to capture stereo equipment) and one photo including VIN numbers such photos will be stored by Wrecker Contractor for sixty (60) days or until vehicle is released and available for WPD, Property & Evidence staff to view and print pictures.

The proposer agrees to hold the City of Wichita and/or the WPD harmless of any and all theft or property damage of vehicles in the proposer's storage lot.

The proposer agrees to absorb all costs assessed against the City of Wichita and/ or WPD related to the theft of or from vehicles from the proposer's storage lot and/or property damage associated with vehicles as a result towing, storing, and releasing vehicles. Upon possession by the proposer of the vehicles contemplated under this agreement, the Department will no longer bear any risk of loss of or damage to the items. Moreover, the proposer shall indemnify the City, the Department and their respective successors, assigns, officers, directors, employees, shareholders and agents, and their heirs, distributees, executors or administrators against any claims made by the purchaser of vehicles sold at auction pursuant to the terms of this agreement. Should a vehicle be sold pursuant to the terms of this agreement need to be returned by the purchaser of the item, the WPD will only be responsible for returning the portion of the sales price that was remitted to it by proposer under the terms of this contract.

7. Personnel

- a. The proposer's employees will act courteously, respectfully, and responsibly toward each rightful owner or agent of each vehicle towed, stored, and released.
- b. The proposer's employees will cooperate with all WPD personnel in any matters related to the storage of vehicles when requested to do so.
- c. The proposer is responsible to retain all vehicle keys that are received at the time of the initial towing of the vehicle. Information pertaining to the existence of the keys should be provided to the auction service. Contracts will be cancelled within thirty (30) of Towing Firm(s) that are not complying with this requirement.
- d. The proposer's employees will ensure that no part or property is removed from any vehicle that is towed or stored by the proposer. If any contraband is found by the proposer and its employees, or the sub proposer and its employees, the proposer *must* notify the WPD immediately. The WPD reserves the right to conduct a legal search of any and all vehicles stored by the proposer.

8. Security

Perimeter Fencing

- a. Each storage lot perimeter will be enclosed by a security fence or wall and will be kept free of weeds, rubbish, or other material able of offering concealment or assistance to an intruder attempting to breach the barrier.
- b. The perimeter fence will completely enclose the area where WPD-invoiced vehicles are secured.

Lighting

- a. The area and structure within the property's general boundaries will be well lit.
- b. The lighting around the perimeter of a location should be uniform.
- c. Light fixtures will be maintained, re-lamped, and cleaned when necessary.
- d. Security camera will be required to record the entire area where WPD police initiated tows are stored 365 days per year, 24 hours per day. Security tapes will be kept for 30 days.

9. Taxes

The proposer shall pay all City, city, state and federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price between the City and the proposer, as the taxes shall be an obligation of the proposer and not of the City, and the City shall be held harmless for same by the proposer.

The City of Wichita is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption certificates will be furnished upon request.

10. All surplus items are sold "As is - No Warranty - Where is" and must be removed from the premises within the time and dates identified in the auction listing. All sales final, no refunds, no returns and no exchanges.